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ABSTRACT

The issue of suspension and expulsion of special education students is examined to assist state- and local-level administrators. Attention is directed to current local policies and practices and conceptual and legal considerations in the suspension and expulsion of handicapped students. Examples of problems and solutions documented by State Education Agencies and Local Education Agencies are included, based on the "Longitudinal Implementation Study of P.L. 94-142." The examples were drawn from six states: California, Florida, Illinois, Pennsylvania, Tennessee, and Washington. It is noted that student suspension has meant the temporary removal of a student for severe or threatening student behaviors. Two major questions are addressed that emerged from recent court cases concerning the suspension/expulsion of handicapped students: (1) Does suspension or expulsion constitute a change in placement? (2) Does the misconduct relate to the child's handicap? Proposed changes in P.L. 94-142 regulations concerning discipline and procedures for handicapped students are included, and four recent court cases are briefly described. The following additional concerns to school districts are discussed: whether the recommended placement and the individualized education program for the handicapped student are appropriate, and what strategies can be used to avoid suspension and expulsion. Lists of two articles, four publications, and nine court cases are appended. (SEW)

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SUSPENSION AND EXPULSION IN SPECIAL EDUCATION

A TECHNICAL ASSISTANCE GUIDE

EC 152

SRI International

SUSPENSION AND EXPULSION IN SPECIAL EDUCATION

A Technical Assistance Guide

November 1982

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Prepared for:

Division of Educational Services
Special Education Programs
U.S. Department of Education

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Purpose of This Guide

This guide was prepared to help state- and local-level administrators examine the issue of suspension and expulsion of special education students. The guide does not suggest policy or recommend particular solutions to the suspension and expulsion issue but rather describes current practices. As a result of PL 94-142 and recent court cases, many state education agencies (SEAs) and local education agencies (LEAs) are questioning their authority and the potential legal ramifications involved when suspending or expelling a special education student. In particular, there is a concern that suspension and expulsion constitute a change in placement which can affect such student's right to an appropriate education. There are also parallel issues of whether a student's misconduct is in fact a result of the handicap, and what decisionmaking process should occur before suspension or expulsion is recommended.

In general, student suspension has meant the temporary removal of a student from regular school and classroom activities for a specified time period. Expulsion has generally meant a long-term or extended removal of a student from regular school and classroom activities for severe or threatening student behaviors. Either action often involves formal school board involvement and approval. In short, suspension and expulsion are usually considered the extreme alternatives on a continuum of disciplinary options. Many districts provide examples of behaviors warranting suspension or expulsion in handbooks for students and parents and in specific suspension and expulsion policies.

This guide discusses the conceptual and legal considerations in the suspension and expulsion of handicapped students and addresses the following questions:

- What are the legal issues?
- What local policies and practices are currently being used?

This guide is one product of SRI International's Longitudinal Implementation Study of PL 94-142, funded by Special Education Programs (SEP) in the U.S. Department of Education. The problems that SEAs and LEAs in this study have faced and the solutions they have tried provide the examples that illustrate issues regarding the suspension and expulsion of handicapped students.* These examples are only illustrations of possible solutions and do not provide definitive answers to the questions listed above.

Acknowledgments

The research contributions of Anne R. Wright, project director of the Longitudinal Implementation Study of PL 94-142, and staff members Christine Padilla and Ellen Grogan Renneker have greatly aided the development of this technical assistance guide.

* Examples were drawn from six of the nine states in SRI's study: California, Florida, Illinois, Pennsylvania, Tennessee, and Washington.

What Are The Legal Issues?

Federal Legislation

Special procedural safeguards for the education of handicapped students have been afforded under Section 504 of the Rehabilitation Act of 1973 and Public Law 94-142. In particular, PL 94-142, the Education for All Handicapped Children Act of 1975, specifies that every handicapped student is entitled to a free appropriate public education. Placement procedures require an individualized education program (IEP) meeting in which an administrator, the student's teacher, the student's parents, and other relevant participants determine the most appropriate educational program to meet the student's unique needs. The question then becomes whether suspension or expulsion constitutes a change in the recommended placement.

Recent court cases (e.g., Stuart v. Nappi, 1978) indicate that suspension and expulsion can be interpreted as a removal process that separates the student from the school and the appropriate program specified in the IEP. If the school or district contends that the student is unable to participate in his/her special education program because of behavior or other problems, it is likely that the appropriateness of the originally recommended IEP can be challenged. In addition, a major confounding issue in suspension and expulsion of a special education student is whether the student's behavior is actually a manifestation of the handicap and who should make that determination (S-1 v. Turlington, 1982).

It is important to note that changes in PL 94-142 regulations concerning discipline and procedures for handicapped students have been proposed. These include:

> Disciplinary rules and procedures (S300.114). Handicapped children are subject to a public agency's normal disciplinary standards and, with limited modifications, to the agency's normal disciplinary procedures.

In particular, a public agency may not impose on a handicapped child a disciplinary sanction that requires a hearing by law or agency policy before determining that the child's behavior was not caused by the child's handicapping condition. An agency is permitted the flexibility to address the sensitive question of the relationship between the handicapping condition and the behavior in either its normal hearing or a separate proceeding. It may also address this question before, at, or after the normal hearing, as the circumstances of the case dictate. Persons familiar with the child and the behaviors associated with the child's handicapping condition must be involved in the determination.

The proposed regulations also make it clear that disciplinary standards and procedures must be applied in a way that does not discriminate against handicapped children and that nothing in the proposed regulations is intended to affect any additional due process requirements imposed by federal or state law regarding disciplinary procedures. The purpose of these changes is to resolve the recurring question of the relationship between the requirement of a free appropriate public education and a school's ordinary disciplinary procedures. The regulations seek to ensure that (1) handicapped children are not subjected to the more serious school disciplinary sanctions for behavior caused by their handicapping condition, (2) handicapped children are otherwise subject to the same disciplinary rules and procedures as are nonhandicapped children, and (3) for relatively minor disciplinary sanctions, flexible and informal procedures may be used for handicapped and nonhandicapped children alike.*

The Department of Education is currently analyzing public comments on the proposed regulations. The language of the regulations could change as a result of this analysis.

Recent Court Cases

Some 290 court cases concerning discipline and related issues have occurred in over 46 states in the last 5 years.** The following is a brief discussion of recent court cases.

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* "A.6. Summary of Proposed Regulations," Federal Register, August 4, 1982, p. 33839.

** NASDSE Liaison Bulletin, Vol. 8, No. 7, April 1, 1982, p. 5.

Goss v. Lopez, 419 U.S. 565 (1975). The U.S. Supreme Court held that school authorities could not deprive any student of school attendance, even for so short a time as 1 day, without according that student rudimentary due process. The court specified the procedures required for out-of-school suspension from 1 to 10 days. This landmark decision applied to all students and was specifically used to justify proposed changes in federal regulations on disciplinary rules and procedures for handicapped students.

Stuart v. Nappi, 443 F. Supp. 1235 (1978). The Danbury, Connecticut, public schools attempted to follow the Goss v. Lopez guidelines in expelling a special education student. However, the trial court held that the proposed expulsion was a "change in educational placement" and as such required adherence to the procedural safeguards of PL 94-142, wherein a special education student cannot lose the benefit of school services.

Mattie T. v. Holladay, DC-75-31-S (1979). In this class action suit, the consent decree limits a student's removal from school programming to no more than 3 days, and only when the student's behavior presents an immediate danger to himself or others. Successive 3-day removal periods are prohibited. Moreover, such removal requires a formal review of the IEP.

S-1 v. Turlington, 635 F. 2d 342 (1982). The Court of Appeals held that a group of trained and knowledgeable persons must determine whether a special education student's misconduct is related to the particular handicap. In addition, while expulsion is a proper disciplinary alternative, a complete cessation of educational services is unlawful and the student retains special procedural safeguards under PL 94-142 and Section 504 of the Rehabilitation Act of 1973.

Influence of State Law and Policy

These preceding and other recent court cases have resulted in controversy over the establishment and enforcement of dual discipline standards for regular and special education students through state law and/or district policy. States and districts in the longitudinal study of PL 94-142 are

taking different approaches to align existing and new disciplinary policy with the outcomes of recent court decisions. Two states in the longitudinal study have tried to outline procedures for LEAs.

As a result of Goss v. Lopez (1975) and other court decisions, one state in the longitudinal study has adopted "A Manual for Implementing a Student Discipline Code," which specifies suspension procedures that the state believes are "legally adequate." In the wake of S-1 v. Turlington, the State of Florida Bureau of Education for Exceptional Students has sought recently to assist districts in developing discipline and expulsion policies and procedures affecting handicapped students. This includes sample policy materials developed by local school districts that address suspension and expulsion issues resulting from Turlington and other court cases. In general, the following procedures must be added to district disciplinary policies in Florida to expel a handicapped student:

(1) Delineate the various kinds of behavior that, under normal circumstances, could warrant the expulsion of handicapped students.

(2) Require that a staffing committee meet to determine whether the student's misconduct bears a relationship to his/her handicap.

(3) [Specify] that the membership of the staffing committee complies with multidisciplinary evaluation team requirements (a specialized and knowledgeable group of persons).

(4) Ensure that any change in educational placement does not result in a complete cessation of educational services.

(5) Ensure that approved policies and procedures for conducting IEP meetings and providing procedural safeguards to parents and guardians of handicapped students conform to the staffing and change-of-placement provisions consistent with PL 94-142 requirements (e.g., writing a new IEP if an alternative placement is employed).

(6) Ensure that the handicapped student's parents or guardian is informed of these policies and procedures.

Other states, where policy on the suspension and expulsion of handicapped students has been deferred to local districts, are awaiting outcomes and related issues from recent court cases before preparing recommended guidelines

for LEAs. In short, even in states where policy has traditionally been left to local districts, SEAs in the SRI study are carefully considering future guidelines and policy recommendations that adhere closely to recent court decisions.

What Local Policies and Practices Are Currently Being Used?

In SRI's longitudinal study of PL 94-142, administrators sometimes spoke of their concern over what has essentially become a dual system of discipline and differential disciplinary treatment for special education students in their district. This concern was felt particularly at the junior or middle school and high school grades. Since students are going from class to class more frequently than in the elementary grades, there seem to be many opportunities for incidents requiring disciplinary actions. Moreover, special education students often get into the same kinds of trouble as their nonhandicapped peers. In one instance, a special education student and his two nonhandicapped peers were caught fighting with another student. The two nonhandicapped students were automatically expelled, but the special education student was not. If this incident had occurred in another district, an IEP meeting might have been called to determine whether that behavior was related to the handicap or, more basically, whether the student simply understood school rules and what was and was not allowable under the rules.

In several sites in the SRI study, district administrators have used a "status quo" policy (sometimes unwritten) that handicapped students are subject to the same discipline code as nonhandicapped students. Some administrators see the district policy as a straightforward interpretation of "mainstreaming philosophy," whereby all students get equal, nondifferential treatment. Some principals will "bend the rules a little" for a student in a full-time special education program or if the particular incident involves teasing by peers or other unusual circumstances. Special education teachers in such districts often use every classroom and school discipline alternative before considering a referral for suspension or expulsion. Some special education teachers have developed special working relationships with a principal or vice-principal so that misconduct by special education students can receive additional consideration.

Some districts in the SRI study base specific policies and/or recommendations for the suspension and expulsion of handicapped students on recent court decisions. In these districts the following questions are being considered:

- Does suspension or expulsion raise a change-in-placement issue?
- Does the misconduct relate to the child's handicap?
- Are the recommended placement and the IEP appropriate?
- What strategies can be used to avoid suspension and expulsion?

Does Suspension or Expulsion Constitute a Change in Placement?

Administrators and educators in many districts believe that PL 94-142 and recent court decisions do not affect the usual disciplinary or removal strategies such as detention, time-out rooms, Saturday work assignments, or counselor behavior contracts. In most instances, such suspension strategies involve only a temporary disciplinary removal of a student from assigned programming. This includes what is often termed "short-term suspension", when a student is sent home for 1 to 5 days. Since these districts believe that such disciplinary action and removal strategies are routine and do not constitute a change in placement, a modification of the IEP is considered unnecessary. Some SEAs and LEAs have specific policies forbidding successive short-term suspensions, and repeated misconduct is the primary indicator that a change in placement may be necessary. As a result of a court case, for example, one district in the longitudinal study allows only a single 3-day suspension; a formal review of the IEP and the placement must occur for the same misconduct.

Another district specifically forbids shortening the daily program of a special education student as a restrictive strategy. District administrators

believe that this practice could be interpreted as a change in placement. Instead, administrators prefer a formal review and placement options such as home instruction or an alternative school. Unlike many other districts that still have informal in-school strategies to remove a student (such as shortening a student's school day), this district feels the need to clearly identify when there is any change in placement, including temporary placements.

In many LEAs in the SRI study, short-term suspension (1 to 5 days) of special education students has not been considered a major policy issue. However, expulsion of special education students presents a major policy question for many districts that recognize the legal issues in changing educational services for long periods, such as the rest of a semester or a school year. For example, one district in the longitudinal study has no separate suspension policy for handicapped students but requires a full educational assessment team meeting if a change in placement (including expulsion) is a possible alternative.

Are the Recommended Placement and the IEP Appropriate?

As a result of recent court decisions that consider suspension and expulsion a "change in placement", as well as the federal mandate of PL 94-142 that guarantees a handicapped student a free appropriate public education, some SEAs and LEAs have developed policies that use expert committees to determine whether the recommended placement and the IEP are actually appropriate to meeting the needs of a handicapped child having disciplinary problems. In some districts, this committee is convened prior to suspension or expulsion to avoid any change in placement. In others, a committee is convened during or after a short-term suspension or other removal arrangement of perhaps 3 to 5 days. Such strategies usually involve immediate parental agreement on the temporary removal of the child and involvement in reviewing the misconduct. In other states and districts, any temporary removal of a special education student requires a review by the IEP committee.

In more violent incidents, special education students have been expelled after the IEP or expert committee decided the behavior presented a "clear and present danger" or if the behavior was indicative of "gross disobedience." Such incidents may lead to new uses for the IEP. Some districts, for example, have decided to change IEP objectives to include corrective action for such negative behaviors as part of an individualized behavior modification effort. In other districts, this documentation may actually serve to clarify that the behavior is not related to the handicap and can therefore help determine any future disciplinary or placement decisions. Thus, the student continues in the same recommended programs with the past misconduct being (1) directly addressed in the classroom expectations and/or (2) determined as either related to the handicap or not.

Does the Misconduct Relate to the Child's Handicap?

The determination of cause and effect relationships between the student's handicapping condition and behavior has presented districts with considerable problems, especially with regard to students with emotional difficulties. Some SEAs and LEAs have a specific policy for some handicaps (e.g., mentally retarded, learning disabled, or emotionally disturbed) that forbids extended suspensions without reconvening for an IEP meeting or informing parents of their due process rights under PL 94-142; other handicaps (e.g., blind, deaf, and the physically handicapped) are not treated differently from the nonhandicapped, and expulsion is possible.

One district participating in the longitudinal study of PL 94-142 has specifically tied expected student behaviors to IEP goals. The IEP form includes three different descriptions of a handicapped student:

- Statement of primary handicap
- Educational manifestation of handicap
- Accompanying behaviors not related to the handicap

Accompanying behaviors unrelated to the handicap might include truancy, drug or alcohol abuse, or other forms of misconduct. If such behavior occurs, a special education student could be suspended or expelled. In short, the IEP specifically designates the misconduct that can lead to expulsion, and parent and child are fully aware of that stipulation.

What Strategies Can Be Used to Avoid Suspension and Expulsion?

Some LEAs take steps to keep informed of student behaviors in order to avoid suspension and expulsion. This might include daily or weekly student contact with counselors or vice-principals. In one district, high school administrators have established a specific discipline coordinating team that includes vice-principals, counselors, social workers, teachers, and special education personnel. These professionals meet daily to review all discipline referrals for handicapped and nonhandicapped students. Discipline problems may simply be noted for future reference and documentation or may be referred, if the case is chronic (e.g., a student has cut class 15 times), for administrative decisionmaking.

One district in the SRI study has developed a crisis intervention team that is used to evaluate any youngster who is being considered for expulsion. This evaluation includes a review of all file information on the student to see whether the behavior might indicate the need for special education, or, if a special education youngster is involved, to initially evaluate whether the handicapping condition is related to the behavior. The district believes that approach avoids a dual system of discipline and provides an important opportunity to evaluate the reasons for the student's misconduct.

Several districts have simply chosen never to expel a special education student and, because of size and available resources, have developed a range of placement alternatives as a way to remove the student and potentially arrest ongoing misconduct or offending behavior. Sometimes, this approach

is taken because school boards or administrators are simply philosophically opposed to (rather than concerned about legality of) suspension and expulsion. Alternatives have included:

- Detention
- Counselor conferences
- After-school campus cleaning
- Saturday work sessions
- Alternative schools
- Work-study programs
- Interschool transfers.

In particular, interschool transfer strategies are frequent in some larger districts. For example, in one large urban district in the longitudinal study, some principals have informal agreements to facilitate the transfer of students with behavior problems. The hope is that the change of school may separate the student from past negative peer problems and facilitate positive behavior change; and, reportedly, in some instances the transfer does in fact help.

In another district, an in-school removal program places handicapped and nonhandicapped youngsters with misconduct problems in a separate room for various periods of time. Youngsters are isolated from their peers and follow a strict regimen of behavior requirements that include separate times for using restrooms and drinking fountains. Since special education students must complete their regular classroom assignments, the district does not consider placement in a detention room setting as requiring any program review other than parent notification. The program has reportedly been successful and has the support of the district's small suburban community.

PL 94-142 has guaranteed every child a free appropriate public education. However, it remains unclear what that might mean when disciplining

or seeking alternative long-term placement for youngsters with behavior and emotional problems. In addition, the appropriateness of alternatives to suspension and expulsion is still being carefully considered by evaluation review teams. Some districts in the longitudinal study are closely watching the outcomes of recent court cases before determining or revising local policy. In fact, some districts consider the expulsion of handicapped students to be too costly in time and professional expense to pursue except in the most extreme cases.

Summary and Conclusion

This guide is not intended to recommend policy or to suggest specific solutions to the problem of suspension and expulsion of handicapped students. However, two major questions have emerged from recent court cases concerned with the suspension and expulsion of handicapped students. These are:

(1) Does suspension or expulsion constitute a change in placement?

(2) Does the misconduct relate to the child's handicap?

Long-term suspension and expulsion are student removal strategies that, in most districts across the country, are considered severe disciplinary measures. Many districts are philosophically opposed to recommending long-term suspension and expulsion. Other districts consider suspension and expulsion to be too costly or to have potential legal liabilities. Large districts often have more placement options, such as home instruction, alternative schools, and separate detention programs, which are recommended before long-term suspension or expulsion is even considered. In addition, classroom changes or interschool transfers are sometimes preferred to assure the continuity of special student programming.

In many SEAs and LEAs that are aware of recent court decisions, either the IEP committee or a comprehensive assessment team is used to determine whether the misconduct is related to the student's handicap. If it is determined that the handicap is related, the IEP and the recommended placement are formally reviewed. If it is determined that the handicap is unrelated to the misconduct, the student may be expelled or subjected to whatever disciplinary measures would apply to a nonhandicapped student, or some other disciplinary strategy may be recommended. In addition, if a special education student is to be expelled, many districts provide home instruction or clearly document their efforts to provide educational alternatives so that the interruption of special services is not at issue. Furthermore, many districts

make other disciplinary policies clear to both parents and students at the beginning of each semester and during annual IEP or parent conferences.

It is clear that school personnel--teachers, principals, and other administrators--need placement alternatives to deal with those difficult instances when a student's misconduct may present a danger to himself, other people, or school property. It seems that decisionmaking is facilitated by the variety of program options that a district can support: behavior modification, after-hours or basic detention programs, alternative work programs, or ongoing one-on-one or small-group counseling programs. All of these alternatives provide the school and district the option of continuing the student's recommended educational program. In addition, such alternatives may provide time to monitor student behavior for a specified period before other recommendations, such as interschool transfer, home instruction, or formal expulsion, are considered. It also allows sufficient time to initiate ongoing communication between school and parents regarding the student's misconduct.

Some of these alternatives are currently financially impossible for many districts battling budget and personnel cutbacks. The infrequent availability of counselors is often cited as a continuing problem in dealing with difficult students, handicapped and nonhandicapped. Administrators also feel hard-pressed to find time to address all the schools' student disciplinary needs, let alone deal with what in some instances may appear to be an unwritten "hands off" or differential treatment policy for special education students.

Despite considerable efforts by many state educational agencies, districts and schools are still waiting for concrete guidelines that will not be solely dependent on the next due process case or court ruling. However, the legal questions in suspending and expelling special education students are likely to continue for some time. Many state educational agencies and local districts are taking a wait-and-see approach to outcomes from current court cases. In short, special education and the issue of discipline, particularly suspension and expulsion, are in a period of transition; but it seems likely

that the major focus will remain on defining and meeting the individual needs of handicapped students within a least restrictive environment, including special education students with self-control and behavior problems.

Further Reading

Articles

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